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SUPREME COURT, U.S.

No. 06-1079

In the Supreme Court of the United States

BRADLEY S. LOGAN, M.D.,

Petitioner,

v.

LEON EVERETT, M.D., VIRGIL CROWDER, M.D., JACK BUCK, CROCKETT HOSPITAL, LLC, and LIFEPOINT HOSPITALS, INC.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Tennessee

BRIEF IN OPPOSITION

ROBERT E. BOSTON
Counsel of Record
WALLER, LANSDEN, DORTCH & DAVIS, LLP
511 UNION STREET - SUITE 2700
NASHVILLE, TN 37219-8966
(615) 244-6380

Counsel for Respondents Leon Everett, M.D., Jack Buck, Crockett Hospital, LLC, and LifePoint Hospitals, Inc.

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

1. Whether review from a decision from the Court of Appeals of Tennessee or the Supreme Court of Tennessee is appropriate under 28 U.S.C. § 1254(1).

2. Whether Petitioner presents compelling reasons to grant the Petition where Petitioner fails to claim that a state court of last resort decided a federal question in a way that conflicts with a decision of another state court of last resort or of a United States court of appeal; as Petitioner failed to present in the state courts the threshold federal constitutional issue of violation of due process other than by a single citation in his appellate brief to the word "constitutional," and no federal constitutional issue was ever decided by the Court of Appeals of Tennessee or the Supreme Court of Tennessee.

3. Whether Petitioner complied with the procedural requirements of a petition for writ of certiorari as required by the United States Supreme Court Rules to grant the Petition.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent LifePoint Hospitals, Inc., hereby discloses that it is not a subsidiary of any parent corporation, nor does any publicly held company own ten percent or more of its stock.

Respondent Crockett Hospital, LLC, hereby discloses that it is a Limited Liability Company which is a wholly owned subsidiary of LifePoint Hospitals, Inc., through its subsidiaries.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF CITED AUTHORITIES v

INTRODUCTION 1

STATUTORY AUTHORITY 1

STATEMENT OF THE CASE 2

A. Procedural History 2

B. Misstatements in Petitioner's Statement of the Case 4

REASONS FOR DENYING THE PETITION 6

A. The U.S. Supreme Court Does Not Have Jurisdiction to Review This Case 6

1. Petitioner's Jurisdictional Basis, 28 U.S.C. § 1254(1), Applies To Federal Circuit Courts Of Appeal And Is Inapplicable To Decisions Arising From State Courts 6

2. Denial Of The Petition For Writ Of Certiorari Is Proper Where A Federal Question Was Never Raised Or Decided By The Court Of Appeal Of Tennessee or The Supreme Court of Tennessee 7

B. The Petition Should Be Denied Because It Is Procedurally Deficient 10

CONCLUSION 10

APPENDIX

Appendix 1: 1/27/06 Tennessee Court of Appeals Opinion 1b

Appendix 2: 8/23/06 Supreme Court of Tennessee Order 20b

TABLE OF AUTHORITIES

Cases

Adams v. Robertson,
520 U.S. 83 (1997) 8, 9

Atlantic Coast Line R.R. Co. v. Mims,
242 U.S. 532 (1917) 8

Hartford Life Ins. Co. v. Johnson,
249 U.S. 490 (1919) 8

Lawrence v. Stanford,
855 S.W.2d 927 (Tenn. 1983) 8

Live Oak Water Users' Assoc. v. R.R. Comm'n. of California,
269 U.S. 354 10

U.S. v. Nixon,
418 U.S. 683 (1974) 7

Waters-Pierce Oil Co. v. Texas,
212 U.S. 89 (1909) 8

Webb v. Webb,
451 U.S. 493 (1981) 8

Statutes

28 U.S.C. § 1254(1) 1, 6, 7

Tenn. Code Ann. § 63-6-219 . . . . . 2, 3

Rules

Sup. Ct. R. 10(b) 8

Sup. Ct. R. 14.1(g)(i) 9, 10

Sup. Ct. R. 15.2 4

Treatises

22 James Wm. Moore et al., Moore's Federal Practice ¶ 403.2 (3d ed. 2006) 6

INTRODUCTION

The Court does not have jurisdiction to hear this case and the Petition should be denied. Certiorari is sought pursuant to 28 U.S.C. § 1254(1), which permits review by this Court from cases in the federal courts of appeal by writ of certiorari. Here, the Petitioner seeks review of a ruling by the Supreme Court of Tennessee not to consider an appeal from the Court of Appeals of Tennessee. This matter has never been heard in a federal court, as is required by § 1254(1). Further, the petition does not present any federal issue within this Court's jurisdiction to review. Petitioner has never raised a federal question in the lower state courts. Therefore, the Court is without jurisdiction to review the state court decision, and the Petition should be denied.

STATUTORY AUTHORITY

24 U.S.C. § 1254(1) Courts of appeals; certiorari; certified questions

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

STATEMENT OF THE CASE

A. Procedural History

Petitioner filed his first Complaint against Leon Everett, M.D. ("Dr. Everett") and "John Does A thru I," in the Circuit Court for Davidson County, Tennessee, alleging, inter alia, that Dr. Everett and others tortiously interfered with a contract between Petitioner and Skyline Medical Center. Logan v. Everett, No. M2005-00012-COA-R3-CV (Tenn. Ct. App. Jan. 27, 2006).

Petitioner then twice amended his Complaint to add various parties, including Jack Buck ("Mr. Buck"), Crockett Hospital, LLC ("Crockett"), and LifePoint Hospitals, Inc. ("LifePoint") and to allege an intentional interference with business relationships claim.

Dr. Everett filed a Motion for Summary Judgment based on the following grounds: (1) because this matter arises out of a medical staff peer review process, Dr. Everett is immune from liability as a matter of Tennessee Peer Review Law, T.C.A. § 63-6-219(d)(2), for providing information to Skyline Hospital's credentialing committee that was investigating Petitioner pursuant to his request; (2) as a condition of the Skyline credentialing process, Petitioner agreed to release from liability any person who provided information in good faith to Skyline Medical Center's medical staff; and (3) there is no record evidence that Dr. Everett took any action with malice, knowledge, or bad faith to interfere with Petitioner's application for privileges. The Circuit Court granted Dr.

Everett's Motion for Summary Judgment.[1] No questions of federal law were raised or decided at the trial court level.

Consequently, Mr. Buck, Crockett, and LifePoint filed a Motion for Summary Judgment based on the same grounds presented by Dr. Everett. In response to this Motion, Petitioner attempted to introduce into the record documents and other evidence created, prepared, or otherwise used by the Skyline Medical Credentialing Committee during its review of Petitioner's application for privileges at that hospital. Because these documents are not discoverable under Tennessee Peer Review Law, T.C.A. § 63-6-219, Skyline, Skyline's CEO, Robert Klein, and Mr. Buck moved the Court for a protective order barring such documents from the record. On November 17, 2004, the Court granted the Motion for Protective Order and the Motion for Summary Judgment on behalf of Mr. Buck, Crockett, and LifePoint. Again, the trial court never considered or ruled upon a question of federal law.

Petitioner filed an appeal to the Court of Appeals of Tennessee on December 17, 2004, addressing the following four issues only:

(1) What is the extent of the privilege from discovery created by the Tennessee Peer Review Law of 1967.

(2) Whether summary judgment was appropriate because the Tennessee Peer Review Law of 1967 bars any claim for liability against the Appellees.

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[1] The Court also granted Virgil Crowder, M.D.'s Motion for Summary Judgment for the identical reasons it granted Dr. Everett's. Dr. Crowder is not represented by the undersigned.

(3) Whether summary judgment was appropriate because the Appellant released all of his claims against each Appellee.

(4) Whether summary judgment was appropriate because, as a matter of law, the Appellees did not tortiously interfere with the Appellant's "business relationship" with Skyline.

Appendix 1. On January 27, 2006, the Court of Appeals of Tennessee affirmed the trial court's decision. App. 1, p. 1. Petitioner then applied for review to the Supreme Court of Tennessee, which denied his application without comment. Logan v. Everett, No. M2005-00012-SC-R11-CV (Tenn. Aug. 28, 2006) (order denying application), Appendix 2. Throughout his appeals through the Tennessee State Courts, no federal issues were raised, argued, or decided.

B. Misstatements in Petitioner's Statement of the Case

Pursuant to Supreme Court Rule 15.2, Respondents are to set forth misstatements of fact or law in the Petition. In this matter, nearly the entire statement of the case presented by Petitioner is a misstatement because it consists of opinion and argument, wholly unsupported by the record in the courts below, and is inconsistent with the statements of fact and law in the decision of the Court of Appeals of Tennessee. Indeed, Petitioner offers no citation whatsoever to the record below. Sup. Ct. R. 14(g)(i).

The following statements from Petitioner's Statement of the Case are the only statements with which Respondents agree and that are not misstatements of fact or law.

(1) In 2001 he [Petitioner] entered negotiations with Skyline Medical Center in Nashville, Tennessee, which resulted in a Recruiting Agreement that was executed in November, 2001. Pet., p. 2

(2) The Petitioner filed in July 2002 an action in Circuit Court for interference with a business relationship and named Dr. Leon Everett as the Defendant with John Does listed as well. Pet., p. 3.

(3) A timely appeal was made to the Tennessee Court of Appeals and oral arguments were heard in October 2005. Pet., p. 4.

(4) The Court of Appeals upheld the district [sic] [circuit] court ruling of "absolute privilege." Pet., p. 4.

(5) A timely appeal was submitted to the Tennessee Supreme Court, which, without comment, denied the application on August 28, 2006. Pet., p. 4.

With the exception of the above-quoted material, Dr. Everett, Mr. Buck, Crockett, and LifePoint object to the remainder of the Petitioner's Statement of the Case because they are misstatements of either law or fact. As such, Petitioner's Statement of the Case should be disregarded in its entirety, and the Court should instead rely on Respondents' Statement of the Case as set forth above and as set forth in the opinion entered by the Court of Appeals of Tennessee. Appendix 1.

Further, Petitioner incorrectly states the procedural history of this matter. According to the Petition, Respondents "moved for summary judgment in September 2003, citing the Tennessee Peer Review Law [("TPRL")]; their motions were

denied and documents relating to the defendants' actions were introduced by the Petitioner and accepted by the district court in February 2004." Petition for Writ of Certiorari ("Pet."), p. 3. As set forth above, Respondents, Dr. Everett, individually, and Mr. Buck, Crockett, and LifePoint, collectively, moved for summary judgment based on TPRL immunity. Despite Petitioner's contention the "district judge" denied these motions, Dr. Everett's motion was granted by the circuit court judge of Davidson County, Tennessee on July 2, 2004, and Mr. Buck, Crockett, and LifePoint's motion was granted on November 14, 2004.[2]

REASONS FOR DENYING THE PETITION

A. The United States Supreme Court Is Without Jurisdiction To Review This Case.

1. Petitioner's Jurisdictional Basis, 28 U.S.C. 1254(1), Applies To Federal Circuit Courts Of Appeal Only And Is Inapplicable To Decisions Arising From State Courts.

This Petition does not present an issue within this Court's jurisdiction or that otherwise satisfies this Court's standards for review. Certiorari is sought pursuant to 28 U.S.C. § 1254(1), which permits review by this Court only from cases in the federal courts of appeals by writ of certiorari. See 22 James Wm. Moore et al., Moore's Federal Practice ¶ 403.02 (3d ed. 2006) ("28 U.S.C. § 1254 gives the Supreme Court jurisdiction to review decisions entered in a civil or criminal case by any of the eleven numbered circuit

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[2] Petitioner also incorrectly prays that the Court remand this matter to the "district court." Pet., p. 8.

courts of appeals, the District of Columbia Circuit Court of Appeals and the Federal Circuit Court of Appeals."). The decisions from the Court of Appeals of Tennessee and the Supreme Court of Tennessee challenged by Petitioner are based upon a correct interpretation of Tennessee state law and the Petition does not present any federal issue within this Court's jurisdiction to review. Petitioner's claims were never before any of the eleven numbered circuit courts of appeal, the District of Columbia Circuit Court of Appeals or the Federal Circuit Court of Appeals, and, therefore, the petition fails due to lack of jurisdiction under 28 U.S.C. § 1254, and it should thus be denied.

2. Denial Of The Petition For Writ Of Certiorari Is Proper Where The Court of Appeals of Tennessee Based Its Decision On A State Question, The Supreme Court of Tennessee Denied The Application For Review Without Comment, And No Federal Question Was Ever Presented Or Decided.

Petitioner also tries to invoke the Court's jurisdiction by claiming he raised a federal constitutional issue in state court. According to Petitioner, because in his lower court briefing he used the word "constitutional" in the context of U.S. v. Nixon, 418 U.S. 683 (1974), he has sufficiently presented a federal issue for review. Pet., p. 2. This, of course, is not the law and no questions of federal law were ever raised during the state court proceedings. Accordingly, with no questions of federal law ever raised below, this Court does not have jurisdiction and the Petition should be denied.

In order for Supreme Court review, a federal claim be asserted, it must be asserted at the proper time, and it must be asserted in the proper manner by pleading, motion or other

appropriate action under the state system of pleading and practice. Hartford Life Ins. Co. v. Johnson v. Johnson, 249 U.S. 490, 493 (1919) (citing Atlantic Coast Line R.R. Co. v. Mims, 242 U.S. 532, 535 (1917)). Likewise, it has long been the general rule in Tennessee that constitutional questions not raised in the trial court will not be entertained on appeal. Lawrence v. Stanford, 855 S.W.2d 927, 929 (Tenn. 1983). The jurisdiction of this Court to review the proceedings of the state courts is limited to the specific instances of denials of federal rights, specially set forth in the state court and denied by the rulings and judgment of that court. Waters-Pierce Oil Co. v. Texas, 212 U.S. 89, 97 (1909). The Supreme Court is not called upon to review the findings of fact made in the state court, but accepts the findings of the court of the state upon matters of fact as conclusive. Id. (citations omitted). Where, as here, a federal question was never drawn into question or decided by any state court, it cannot be said that the decision of the state court conflicts with the Constitutional decisions of other state courts of last resort or of a United States Court of Appeal. Sup. Ct. R. 10(b).

Moreover, the Petitioner has the burden of showing that the federal issue was properly presented to the state court. Adams v. Robertson, 520 U.S. 83, 85 (1997). When the highest state court is silent on a federal question before this Court, it will assume that the issue was not properly presented below. Id. at 86. The aggrieved party bears the burden of defeating the assumption by demonstrating that the state court had a fair opportunity to address the federal question. Id. at 87, (quoting Webb v. Webb, 451 U.S. 493, 501 (1981)). Petitioner may rebut the assumption by establishing that the federal claim was raised at a time and manner required by state law.

Here, Petitioner fails to set forth when a federal question was raised, the method or manner of raising the question, the way in which the state court passed on that question, or specific portions of the record or summary with references to show that the federal question was timely and properly raised. Sup. Ct. R. 14.1(g)(i). A review of the Record below establishes why. The Petitioner has never, at any time below, ever raised a federal question. Petitioner twice amended his Complaint in this matter, and at no time did he ever add a claim for violation of any federal constitutional right, and the Court of Appeals of Tennessee never addressed a federal constitutional issue on appeal– of the four issues addressed by the Court of Appeals, not one is remotely related to a any type of federal question. Pet., App. p. xiii-ix. Petitioner presents no federal question, and the Supreme Court of Tennessee denied his application for appeal without comment. As previously stated, when the Tennessee Supreme Court is silent on a federal question before this Court, this Court should assume that the federal question was improperly raised in the lower court. Thus, at no time prior to filing his Petition has Petitioner raised any federal question and, therefore, the Court lacks jurisdiction on this basis. See Adams, 520 U.S. at 85.

Even though Petitioner mentions the alleged federal question in his Petition, he does not develop any argument based on federal Constitutional law or on a federal statute. Instead, he focuses on the believed improper interpretation of a Tennessee statute under applicable Tennessee case law by the Tennessee appellate courts. Because no federal issue was raised below or decided by either the Court of Appeals of Tennessee or the Supreme Court of Tennessee, this Court lacks jurisdiction over Petitioner's points of appeal. As such, the Petition should be denied.

B. The Petition Should Be Denied Because It Is Procedurally Deficient.

As explained above, Petitioner makes many misstatements of fact and law in his Statement of the Case and includes opinion, argument, and conjecture that are unsupported by the record. In addition, the Petition fails to comply with the United States Supreme Court Rules. Contrary to Rule 14.1(g)(i), Petitioner's Statement of the Case does not contain when the federal question was raised, the method or manner of raising the federal question, or the disposition of the lower court on the federal question. See also Live Oak Water Users' Assoc. v. Railroad Com. of California, 269 U.S. 354, 357 (1926). As discussed in Argument Section A. 2., Petitioner can not make such representations regarding when the federal question was raised because no federal question was raised below. Because of the procedural deficiencies this Court should deny the Petitioner's writ.

CONCLUSION

This matter does not arise out of the federal courts and no federal claims were ever raised by Petitioner in the lower courts. Accordingly, Petitioner fails to set forth any jurisdictional basis upon which this Court should grant the Petition for Writ of Certiorari and for these reasons the Petition should be denied.

Respectfully submitted,

Robert E. Boston
Counsel of Record
Waller, Lansden, Dortch & Davis, LLP
511 Union Street, Suite 2100
Nashville, Tennessee 37219-8966
(615) 244-6380

Counsel for Respondents Leon Everett, M.D., Jack Buck, Crockett Hospital, LLC, & LifePoint Hospitals, Inc.

APPENDIX

APPENDIX 1

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 12, 2005 Session

No. M2005-00012-COA-R3-CV

[Filed January 27, 2006]

BRADLEY S. LOGAN, M.D.	)
	)
v.	)
	)
LEON EVERETT, M.D., VIRGIL CROWDER, M.D., JACK BUCK, CROCKETT HOSPITAL, LLC., and LIFEPOINT HOSPITALS, INC.	)

Direct Appeal from the Circuit Court
for Davidson County, No. 02C-2090
Hon. Hamilton V. Gayden, Jr. Circuit Judge

Plaintiff sued defendants, claiming defendants intentionally interfered with a business relationship by making false and malicious statements about him. The Trial Court granted defendants summary judgment on the grounds defendants were immune pursuant to Tenn. Code Ann. § 63-6-210(d)(1)(2) for providing information to a credential committee investigating plaintiff. On appeal, we affirm the Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, J., joined.

Bradley S. Logan, M.D., Nashville, Tennessee, *pro se*.

Robert L. Trentham and Taylor B. Mayes, Nashville, Tennessee, for Appellee, Virgil Crowder, M.D.

Andrew S. Naylor and Stanley E. Graham, Nashville, Tennessee, for Appellees, Leon Everett, M.D., Jack Buck, Crockett Hospital, LLC., and Lifepoint Hospitals, Inc.

OPINION

TRIAL COURT PROCEEDINGS

Plaintiff, a physician, sued Dr. Leon E. Everett and John Does A thru I, and averred he was a licensed physician, and that Dr. Everett practices medicine in Lawrenceburg, Tennessee where he is the Chief of the Medical Staff of Crockett Hospital.

The Complaint averred that in 2001 plaintiff began negotiations with Skyline Medical Center ("Skyline") with the purpose of moving his medical practice from Lawrenceburg, Tennessee, to Nashville, and that plaintiff and Skyline entered into a Recruiting Agreement wherein Skyline promised to guaranty plaintiff a minimum monthly income for the first year of his practice in Nashville. The promise was conditioned upon Plaintiff "obtaining and maintaining full medical staff privileges at [Skyline]" and engaging "in the

full-time private practice of medicine as [an] Ob/Gyn in [Nashville]" by January 1, 2002.[1] Plaintiff further averred that he applied for medical privileges at Skyline, but was informed that his application would be rejected due to negative statements made by individuals at Crockett Hospital. Further, that plaintiff learned that none of the physicians contacted by Skyline during the application process gave him a positive reference, and his Complaint concluded that defendants committed tortious interference with the contract between plaintiff and Skyline by making false and malicious statements in bad faith.

Subsequently, the Trial Court allowed plaintiff to amend his Complaint to add Virgil H. Crowder, M.D.; Crockett Hospital, LLC ("Crockett"); and LifePoint Hospitals, Inc. ("LifePoint") as defendants.

On December 3, 2003, Dr. Crowder filed a Motion for Summary Judgment and a Statement of Undisputed Facts. The Motion argued:

> [Dr. Crowder] made no statements whatsoever to representatives of [Skyline] concerning the application by the [P]laintiff... to [Skyline] for medical staff privileges and therefore, [Plaintiff's] claims against Dr. Crowder necessarily fail to state a claim upon which relief could be granted for intentional interference with a business relationship as a matter of law.

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[1] Plaintiff did not engage in full time practice as an Ob/Gyn in Nashville by the January 1, 2002 deadline, and Skyline rescinded the Recruiting Agreement on February 20, 2002.

The Trial Court denied Dr. Crowder's Motion, and Dr. Everett then filed a Motion for Summary Judgment on the grounds that plaintiff had executed a Release, which released from liability, "all representatives of the hospital and its medical staff for their acts performed in good faith and without malice in connection with evaluating my application and my credentials and qualifications". A copy of the Release was filed, along with a Motion, as well as excerpts from the deposition of plaintiff. One of the more relevant exchanges from the deposition is:

Q: So you don't know what Dr. Everett said [to the credentials committee]?

A: Of course not.

Q: Do you have any knowledge or information that would tend to show or suggest that anything Dr. Everett may have said to any one was untrue or was a lie?

A: No.

Q: Do you have any facts or anything to show that would suggest that anything that Dr. Everett may have said to anyone with regard to your application at Skyline was made in bad faith?

A: Yes

. . .

Q: Okay. Tell me what the proof is, facts, or hearsay.

A: Okay .... Kelly Duggan [a Skyline attorney] communicated to me that none of the physicians that

were contacted by Skyline... gave [me] a positive reference. Mr. Klein [Skyline's CEO] has also said that it was the telephone conversation with physicians in Lawrenceburg that made the credentials committee uncomfortable.

Q: Anything else?

A: Dr. Everett has told me that he spoke to somebody at Skyline .... Dr. Everett has also told me that he told them that my charts were reviewed.

. . .

Q: And your charts were, in fact, reviewed?

A: Yes.

. . .

A: Okay. So then Dr. Neal [President of Skyline's medical staff] spoke to Dr. [Janice] Huckaby [Plaintiff's friend and colleague] and said that he spoke to the physicians in Lawrenceburg and that they did not give [me] a positive reference, that he took each of those persons off of the record and had a conversation with them that also made him feel uncomfortable.

Q: Anything else?

A: At this time, no.

Plaintiff responded to these Motions for Summary Judgment, but did not file responses to the Statement of

Undisputed Facts filed by Dr. Everett and Dr. Crowder. Regarding the doctors' arguments that they were immune pursuant to Tenn. Code Ann. § 63-6-219(d)(2), plaintiff argued that there was a factual issue as to whether this immunity applied because this immunity is conditioned on acting in good faith without malice and the immunity could be lost if the doctors provided false information and actually knew the information was false. Regarding the doctors' assertion there was no evidence to show that they engaged in the alleged tortious conduct, plaintiff argued that his search for evidence was hampered by assertions of the peer review privilege and that the documents evidencing communication between representatives of Skyline and doctors at Crockett raised the possibility of false and malicious statements.

Two of the documents relied on by plaintiff, were telephone verification forms, one of which lists comments made by the Chief of Staff at Crockett (i.e. Dr. Everett). The comments listed on the form include the following: "has had some issues–now resolved[;] lots of politics[;] poor relationship with peers[;] some complications–reviews done[;] recommended.". The other form is not dated and lists comments made by a former Chief of Staff at Crockett. Plaintiff also attached, as an exhibit to his Response to Dr. Crowder's Motion, a letter dated February 22, 2002, written on Dr. Crowder's stationary, which was not signed and addressed to Skyline's Credentials Committee. The letter included the following comments:

> [Plaintiff's] charts were reviewed at my request because I thought that his surgical complication rates might be high .... The Surgery [Committee] had reviewed all instances of complications for [Plaintiff] as a regular part of its function. No finding of complications was ever categorized as other than "a

> known complication of surgery appropriately handled."... [Plaintiff's] complication rate was compared to system wide averages and his average was actually below the system average. Outside review was performed. The Medical Executive Committee met, reviewed the findings and no recommendation for anything other than observation for 6 months was made.

The Trial Court granted Dr. Crowder's and Dr. Everett's Motions for Summary Judgment.

Plaintiff then filed a Motion to Amend his Complaint and added Jack Buck as a Defendant. This Complaint averred that Buck was the Chief Executive Officer of Crockett and that he committed intentional interference with the business relationship between Plaintiff and Skyline by knowingly making false statements to Skyline's CEO about Plaintiff's abilities.

Crockett, LifePoint, and Mr. Buck filed a Motion for Summary Judgment and Statement of Undisputed Facts based upon the same grounds presented by Drs. Everett and Crowder. In plaintiff's Response to the Motion, plaintiff attached a telephone verification form listing comments regarding plaintiff made by Buck to Robert Klein, Skyline's CEO. The form listed these comments:

> very negative overall; both clinical and financial issues[;] '4 months behind rent'[;] behind in ultrasound lease payments[;] spoke of numerous surgical mishaps; 'sloppy' [;]... bad reputation.

Plaintiff alleged these comments evidenced false statements made by Buck, and served a subpoena upon Klein for a

deposition and specified documents, as well as a subpoena upon Skyline to produce specified documents. At these parties' request, the Trial Court entered a Protective Order denying discovery and granted defendants' Motion for Summary Judgment.

ISSUES RAISED ON APPEAL

1. What is the extent of the privilege from discovery created by the Tennessee Peer Review Law of 1967?

2. Whether summary judgment was appropriate because the Tennessee Peer Review Law of 1967 bars any claim for liability against the Appellees.

3. Whether summary judgment was appropriate because the Appellant released all of his claims against each Appellee.

4. Whether summary judgment was appropriate because, as a matter of law, the Appellees did not tortiously interfere with the Appellant's "business relationship" with Skyline.

Our review of summary judgments are *de novo* "without any presumption of correctness accorded the trial court's judgment." *Guy v. Mutual of Omaha Ins. Co.,* 79 S.W.3d 528, 534 (Tenn. 2002). Our task in deciding the propriety of a summary judgment is to determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Guy, (quoting Tenn. R. Civ. P. 56.04). When making this determination,

"[c]ourts must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor." *Staples v. CBL & Assocs., Inc.,* 15 S.W.3d 83, 89 (Tenn. 2000). "If both the facts and conclusions to be drawn therefrom permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." *Seavers v. Methodist Med. Ctr. of Oak Ridge,* 9 S.W.3d 86, 91 (Tenn. 1999).

The moving party must do more than make conclusory assertions "that the nonmoving party has no evidence." *Byrd v. Hall,* 847 S.W.2d 208, 215 (Tenn. 1993). Instead, the moving party must either "affirmatively negate an essential element of the nonmoving party's claim" or "conclusively establish an affirmative defense that defeats the nonmoving party's claim." *Id.* at 215 n.5. At this juncture, the noumoving party may not simply rely upon "the allegations or denials of his pleadings," but must establish the existence of genuine disputed issues of material fact. *Id.*

Defendants argued below, and on appeal, that the Tennessee Peer Review Law of 1967 (the "TPRL") creates an absolute privilege protecting their communications with Skyline regarding Plaintiff's application for privileges. Plaintiff counters that the privilege from discovery is not absolute.

The General Assembly enacted the TPRL in order to create an "incentive for the medical profession to undertake professional review." Tenn. Code Ann. § 63-6-219(b)(2) (2005). As part of this incentive, the General Assembly decided that "peer review committees must be protected from liability for their good faith efforts." The TPRL includes the following provision:

> (d)(1) All state and local professional associations and societies and other organizations,...**any person who participates with or assists a medical review committee** with respect to its functions, or any other individual appointed to any committee, as such term is described in subsection (c), **is immune from liability to any... individual** or organization **for furnishing information... to any such committee** or for damages resulting from any decision... entered or acted upon by such committees undertaken or performed within the scope or function of the duties of such committees, **if made or taken in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.**

Tenn. Code Ann. § 63-6-219(d)(1) (2005). (Emphasis supplied). As the foregoing establishes, immunity is conditioned on acting "in good faith, and without malice, and on the basis of facts reasonably known or reasonably believed to exist." In 1988, General Assembly amended the original Act, as it applies to those who provide information to medical review committees. 1988 Tenn. Pub. Acts, ch. 609, § 2. The following language was added to the Act:

> (2) Notwithstanding the provisions of subdivision (d)(1), **any person providing information**, whether as a witness or otherwise, **to a medical review committee** regarding the competence or professional conduct of a physician **is immune** from liability to any person, **unless such information is false and the person providing it had actual knowledge of such falsity**.

Tenn. Code Ann. § 63-6-219(d)(2) (2005) (emphasis supplied). The foregoing phrase establishes that any further

consideration of an information-provider's good faith or malice is unnecessary. *Ironside v. Simi ValleyHosp.*, 188 F.3d 350, 353 (6th Cir. 1999).

Beyond a showing that they assisted a review committee, participants in the medical review process do not have to prove their eligibility for immunity. Instead, "[a] member of a medical review committee, or person reporting information to a medical review committee, is presumed to have acted in good faith and without malice. Any person alleging lack of good faith has the burden of proving bad faith and malice." Tenn. Code Ann. § 63-6-219(d)(3). Thus, where a plaintiff wishes to demonstrate that a provider of information to a medical review committee is ineligible for immunity, the plaintiff must prove the information was false and the provider had actual knowledge of its falsity.

The TPRL also protects the information submitted to and generated by such review committees by making it confidential and privileged. Tenn. Code Ann. § 63-6-219(e). Plaintiff argues there is an implied exception to this privilege which gives the party opposing immunity the right to discover information otherwise privileged under subsection (e). We cannot agree with this interpretation of the provision. The General Assembly expressed its intent regarding subsection (e) as follows:

> [I]t is the stated policy of Tennessee to encourage committees made up of Tennessee's licensed physicians to candidly, conscientiously, and objectively evaluate and review their peers' professional conduct, competence, and ability to practice medicine. Tennessee further recognizes that confidentiality is essential both to effective functioning of these peer review committees and to continued

improvement in the care and treatment of patients.

Tenn. Code. Ann. § 63-6-219(b)(1).

According to the plain terms of Subsection (e), the privilege from discovery is broad and protects "[a]ll information, interviews, incident or other reports, statements, memoranda or other data furnished to any [medical peer review] committee." The plain terms of this section provide for only three limitations in the privilege's scope. First, the privilege only protects information "furnished to, or generated by, a medical peer review committee." Second, the privilege only applies in civil actions. Third, the privilege applies to neither "records made in the regular course of business" nor to "records otherwise available from original sources" which are simply presented during the proceedings of a medical peer review committee.

Under plaintiffs interpretation of subsection (e), a participant in the peer review process could not assert his immunity without simultaneously losing enjoyment of the privilege from discovery created by the subsection. Accordingly, plaintiff's interpretation would have the effect of rendering the privilege created by subsection (e) effectively void. "It is a well-settled principle of statutory construction that statutory provisions should be construed in a manner that will not render them meaningless or useless." *Hoyer-Schlesinger-Turner, Inc. v. Benson,* 479 S.W.2d 223, 225 (Tenn. 1972).

Plaintiff argues that the Tennessee Supreme Court has recognized an implied exception to the peer review privilege in *Eyring v. Fort Sanders Parkwest Med. Ctr., Inc.,* 991 S.W.2d 230 (Tenn. 1999). In *Eyring,* the plaintiff was a licensed physician with staff privileges at the defendant

hospital, and his privileges were later revoked by a medical review committee at the hospital. The plaintiff sued the hospital, charging intentional interference with a business relationship. The Trial Court allowed the plaintiff to conduct discovery of peer review participants for the limited purpose of allowing the plaintiff to discover the participants' good faith, malice, and whether they acted on the basis of facts reasonably known or believed to exist, but declined to allow plaintiff to conduct discovery regarding the peer review process itself.

Prior to 1999, the second sentence of the peer review privilege provision stated, "All such information, in any form whatsoever, so furnished to, or generated by, a medical review committee shall be privileged communication subject to the laws pertaining to the attorney-client privilege." 1994 Tenn. Pub. Acts, ch. 732, § 6. The plaintiff argued that the language "subject to the laws pertaining to the attorney-client privilege" granted an implied exception to the confidentiality privilege, which argument was rejected by this Court. The plaintiff appealed to the Supreme Court, which affirmed the Trial Court's approach with the following reasoning:

> This statute creates a broad privilege from disclosure for "[all] information, interviews, incident or other reports, statements, memoranda or other data... and any findings conclusions or recommendations resulting from the [committees'] proceedings." **In our view, this broad language encompasses any and all matters related to the peer review proeess itself. We reject Eyring's contention that the statute grants an implicit right to any information "furnished to or resulting from the proceedings" of the peer review committees.**

> It appears, however, that the broad language extending the privilege from discovery must be reconciled with the statutory requirement that the plaintiff bear the burden of producing evidence of malice and bad faith. **We therefore agree with the trial court's ruling allowing Eyring to conduct discovery for the limited purpose of investigating the committee members' good faith, malice, and reasonable knowledge or belief, but prohibiting any inquiry into the peer review process itself.** Accordingly, we conclude that . . . the broad language of the statute encompasses any and all matters related to the peer review process.

Eyring, p.239 (citations omitted) (emphasis supplied).

The Supreme Court clearly rejected the plaintiff's contention that the statute grants an implicit right to any information furnished to or resulting from the proceedings of the peer review committees, and prohibits any inquiry into the peer review process itself. In the Court's words, "the broad language of the statute encompasses any and all matters related to the peer review process."

We conclude there is no implied exception to the rights of privilege and confidentiality created by the statute.

Next, plaintiff argues that the immunity from civil liability is conditional, and whether the relevant conditions have been satisfied is a genuine issue of material fact. Defendants counter that summary judgment was appropriate because they are immune to liability under the TPRL.

The record establishes that Skyline's Credentials Committee and its Medical Executive Committee are "medical review committees" for purposes of Tenn. Code Ann. § 63-6-

219. In this regard see a definition of the medical review committee contained in Tenn. Code Arm. § 63-6-219(c).

Plaintiff's claim is based on the belief that the defendants provided information to Skyline's Credentials Committee regarding plaintiff's application for privileges at Skyline. The record establishes that these individuals satisfy subsection (d)(2)'s definition of "person[s] providing information, whether as a witness or otherwise, to a medical review committee regarding the competence or professional conduct of a physician." As such, they have "immunity from liability to any person" unless the information they provided was false and they had actual knowledge of its falsity. According to Tenn. Code Ann. § 63-6-219(d)(3), the defendants will be presumed to enjoy this immunity unless plaintiff can show they are ineligible.

We have previously noted that plaintiff, as to Dr. Everett, testified that he did not have any knowledge or information that would suggest that what Everett may have said "was untrue or was a lie." The material submitted by plaintiff in support of his claim against Everett is the telephone verification form prepared by an agent of Skyline's Credentials Committee listing notes of a telephone conversation with Dr. Everett. However, under Tenn. Code Aun. § 63-6-219(e) "[a]ll information, interviews, incident or other reports, statements, memoranda or other data furnished to any [medical peer review] committee" are privileged from discovery. The telephone verifieatiun form falls within this category, and therefore would be inadmissible at trial. Although the facts relied upon by plaintiff need not be in admissible form, they "must be admissible at the trial." *Byrd,* 215-16. Plaintiffhas failed to establish a disputed issue of material fact as to Everett's ineligibility for immunity, and summary judgment was appropriate in his case.

Plaintiff's support for his claim against Dr. Crowder, is another telephone verification form prepared by an agent of Skyline's Credentials Committee listing notes of an alleged telephone conversation with Dr. Crowder.[2] Under Tenn. Code Ann. § 63-6-219(e), however, this form is privileged and would not be admissible at trial. Plaintiff also presented minutes from a meeting of Skyline's Credentials Committee as circumstantial evidence of what Dr. Crowder told the Credentials Committee.[3] These minutes are also privileged from discovery pursuant to Subsection (e).

The only other material presented by plaintiff in support of his claim is a letter dated February 22, 2002 and addressed to Skyline's Credentials Committee regarding plaintiff's application for privileges. The letter is written on Dr. Crowder's stationary, but it was not signed. The Record indicates this copy of the letter was sent to Plaintiff by Dr. Crowder's clinic, assuming *arguendo* that the letter is admissible, it does not create a disputed issue of material fact as to whether Dr. Crowder supplied false information to Skyline because plaintiff has not presented any evidence that any of the information in the letter is false. Therefore, summary judgment in favor of Dr. Crowder was properly entered by the Trial Court.

In support of plaintiff's claim against Mr. Buck, plaintiff presented a third telephone verification form prepared by Skyline's CEO, Robert Klein. Klein is a member of Skyline's Credentials Committee. Robert Klein listed notes of a

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[2] Dr. Crowder's name is not mentioned on this form.

[3] Although the minutes refer to comments made by "the former Chief of Staff at Crockett", Dr. Crowder is not mentioned by name in the minutes.

conversation with Buck regarding plaintiff's application for privileges at Skyline. Under Subsection (e), however, this form is privileged and would be inadmissible at trial. This form is the only evidence presented by plaintiff regarding Buck's communications with Skyline's Credentials Committee. Plaintiff therefore, has not established what information was provided by Buck, and hence, cannot establish whether that information was true or false. Accordingly, summary judgment was appropriate for Mr. Buck.

The parties do not dispute that Dr. Everett and Mr. Buck are employees of Crockett, and "[A]n employer may be held liable for the torts committed by his or her employees while performing duties within the scope of employment." *White v. Revco Disc. Drug Ctrs., Inc.,* 33 S.W.3d 713, 718 (Tenn. 2000). Yet, "a principal may not be held vicariously liable under the doctrine of respondeat superior based upon the acts of its agent... when the right of action against the agent is extinguished by operation of law .... " *Johnson v. LeBonheur Children's Med. Ctr.,* 74 S.W.3d 338, 345 (Tenn. 2002); *see also Graham v. Miller,* 187 S.W.2d 622, 625-26 (Tenn. 1945); *Raines v. Mercer,* 55 S.W.2d 263, 264 (Tenn. 1932). We have concluded that Dr. Everett and Mr. Buck are entitled to immunity. Plaintiff's right of action against these agents is extinguished by operation of law, and summary judgment in Crockett's favor was appropriate.

Plaintiff's Complaint did not clearly state how LifePoint could be held liable for intentional interference with the business relationship between Plaintiff and Skyline. During depositions, Plaintiff asserted that LifePoint committed this tort through the actions of its employees. Plaintiff alleged that

one of these employees, Mr. Gracey,[4] "failed to put adequate policies and procedures in effect to deal appropriately with false allegations that had been made against [Plaintiff] during [Plaintiff's] tenure at Crockett." Plaintiff also alleged that another LifePoint employee, Mr. Kunkel,[5] made false statements to Skyline regarding Plaintiff's lease payments at Crockett.

Plaintiff does not allege that Mr. Gracey communicated with Skyline's Credentials Committee, but whatever immunity was provided by Tenn. Code Ann. § 63-6-219(d), Mr. Gracey's alleged conduct does not support a claim for intentional interference with a business relationship. The tort of intentional interference with business relationships requires intentional conduct. Our Supreme Court outlined the elements of this tort as follows:

> We also hold that liability should be imposed on the interfering party provided that the plaintiff can demonstrate the following: (1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons; (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiffs business dealings with others in general; **(3) the defendantts intent to cause the breach or termination of the business relationship;** (4) the defendant's improper motive or improper means; and finally, (5) damages resulting from the tortious interference.

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[4] According to LifePoint's Brief, William Gracey is LifePoint's Chief Operations Officer.

[5] According to LifePoint's Brief, Neil Kunkel is LifePoint's in-house counsel.

Trau-Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 701 (Tenn. 2002). (emphasis supplied). Plaintiff does not allege that Gracey intended to terminate plaintiff's business relationship with Skyline. Instead, Plaintiff asserts that Gracey "failed to put adequate policies and procedures into effect." This allegedly negligent conduct is insufficient to satisfy the third element of plaintiff's claim, which requires intentional conduct.

Plaintiff alleges that Kunkel falsely told representatives of Skyline's Credentials Committee that Plaintiff had "unpaid lease amounts at [Crockett]." If plaintiffs belief that Kunkel provided information to Skyline's Credentials Committee is correct, then Kunkel would be entitled to immunity pursuant to Tenn. Code Ann. § 63-6-219(d)(2), unless the information he provided was false and he had actual knowledge of its falsity. Plaintiff provided no evidence showing that Mr. Kunkel's statement was false. For these reasons, the plaintiff has failed to establish his claim against LifePoint, and summary judgment was appropriate as to this defendant.

The foregoing renders the remaining issues moot, and we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to the plaintiff, Bradley S. Logan, M.D.

/s/
HERSCHEL PICKENS FRANKS, P.J.

APPENDIX 2

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

No. M2005-00012-SC-R11-CV

[Filed August 23, 2006]

BRADLEY S. LOGAN,	)
	)
v.	)
	)
LEON EVERETT, M.D., ET AL.	)
	)

ORDER

Upon consideration of Bradley S. Logan's application for permission to appeal and the record before us, the application is denied.

PER CURIAM